



Competition

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Topics of Discussion

- ▶ **Area of Responsibility**
 - **FAR Acquisition Strategy Team responsibilities**
- ▶ **Defense Acquisition Regulation System Committees**
 - **Team Membership**
- ▶ **Published FAR and DFARS Rules**
 - **Published Proposed Rules**
 - **Published Interim Rules**
 - **Published Final Rules**
- ▶ **Questions**



Area of Responsibility

- ▶ The Chair of the FAR Acquisition Strategy Team responsible for complex cases in the committee's assigned FAR Parts.
- ▶ FAR Parts assigned to the FAR Acquisition Strategy Team include
 - **5-8, 10-19, 26, 34, 35**
 - **On occasion, coverage of other FAR Parts may be necessary due to the potential widespread impact of a rule**
- ▶ The Team will be assigned complex cases which are those that require expertise and/or deliberation by the FAR Team.
- ▶ The FAR Acquisition Strategy Team is comprised of "core" members and "rotational" members. Meetings to frame and discuss key cases are held throughout the duration of the development of a rule.
- ▶ Depending on the rule, special advisors or subject matter experts are included in team discussions and/or preparation of the rule and report .



Defense Acquisition Regulation System Committees

▶ Federal Acquisition Regulation Acquisition Strategy Committee

- Michael Benavides, OSD (Chair)
- Michael O. Jackson, GSA (Deputy Chair)
- Sandra Spiess, AMC (Army)
- Cassandra Wells, DoT
- Barbara Binney, DoE
- William Clark, GSA
- Cecelia Davis, GSA
- Ernest Woodson, GSA
- Marilyn Seppi, NASA

▶ Defense Federal Acquisition Regulation Supplement Contract Placement Committee

- Greg Snyder, Air Force (Chair)
- Michael Benavides, OSD (Deputy Chair)
- Debra Parra, Army
- Sharon Ellis, Navy
- Ynette Shelkin, DLA
- Mike Chiffolo, DLA

On occasion the FAR Acquisition Strategy Team as well as the DFARS team are supplemented with Special Advisors or subject matter experts.



Published FAR and DFARS Rules

▶ Proposed

- **FAR Case 2007-008 “Limiting Length of Noncompetitive Contracts in ‘Unusual and Compelling Urgency’ Circumstances”**
- **FAR Case 2006-026 “Government Purchase Card Restriction for Delinquent Federal Debt”**
- **DFARS Case 2007-D007 “Item Identification and Valuation Clause Update”**

▶ Interim

- **FAR Case 2006-027 “Use of \$1 Coins on Federal Facilities”**
- **DFARS Case 2007-D016 “Ship Critical Safety Items”**

▶ Final

- **DFARS Case 2007-D005 “Commercial Item Determinations”**



Published Proposed Rules

- **FAR Case 2007-008 “Limiting Length of Noncompetitive Contracts in ‘Unusual and Compelling Urgency’ Circumstances”**
- **FAR Case 2006-026 “Government Purchase Card Restriction for Delinquent Federal Debt”**
- **DFARS Case 2007-D007 “Item Identification and Valuation Clause Update”**



FAR Case 2007-008 “Limiting Length of Noncompetitive Contracts in ‘Unusual and Compelling Urgency’ Circumstances”

- ▶ **Type:** Proposed rule was published in the Federal Register at 73 FR 5784 on January 31, 2008. Public comment period closes March 31, 2008.
- ▶ **Source:** Office of Federal Procurement Policy (OFPP) in a May 31, 2007 memorandum “Enhancing Competition in Federal Acquisition” sponsored business case.
- ▶ **Synopsis of rule as published:**
 - Period of performance shall not exceed the minimum period necessary for meeting the unusual or compelling urgency requirements but no longer than one year unless a longer period of performance is approved by the HCA
 - This rule implements a contract period limitation under FAR Part 6.302-2
 - Approval of a contract period of performance longer than one year is in addition to J&A requirements at 6.304



FAR Case 2007-008 “Limiting Length of Noncompetitive Contracts in ‘Unusual and Compelling Urgency’ Circumstances”

- ▶ **OFPP Administrator issued a memorandum on May 31, 2007 that spoke to a number of areas regarding enhancing competition, namely the use of noncompetitive contracts awarded using “urgent and compelling” requirements.**
- ▶ **Proposed several initiatives to Senior Procurement Executives and Chief Acquisition Officers to challenge barriers to competition.**
- ▶ **The belief is that noncompetitive contracts awarded using unusual and compelling reasons are necessary but should be issued for the minimum contract period necessary to meet the minimum requirements for the Government, and for no more than one year.**
- ▶ **Proposed rule addresses limitation of contract period, approval of period in addition to justification and approval requirements.**



FAR Case 2006-026 “Government Purchase Card Restriction for Delinquent Federal Debt”

- ▶ **Type:** Proposed rule was published at Federal Register 72 FR 74255 on December 31, 2007. Public comment period closed February 29, 2008.
- ▶ **Source:** Federal Contractors Tax Compliance Task Force & Government Accountability Office Report, June 2005
- ▶ **Synopsis of rule:**
 - **Amend the FAR to restrict the use of the Governmentwide commercial purchase card as a method of payment for contractors with debts subject to the Treasury Offset Program.**
 - **Require contracting officers to determine whether the Central Contractor Registration (CCR) indicates that the contractor has delinquent debt that is subject to collection under the TOP.**
 - **If a debt indicator is found, the Governmentwide commercial purchase card is not authorized as a method of payment.**
 - **Contracting officers are required to check for the flag at the time of contract award, order placement, and again before exercising any options.**
 - **Amend the applicable Governmentwide commercial purchase card payment clause at 52.232-36 to restrict use of the purchase card as a method of payment if a debt indicator is included in the CCR for the contractor.**



FAR Case 2006-026 “Government Purchase Card Restriction for Delinquent Federal Debt”

- ▶ **The Debt Collection Improvement Act of 1996 and other statutes provide the tools for administering a centralized program for the collection of delinquent, non-tax and tax debts.**
- ▶ **The Financial Management Service (FMS), a bureau of the Department of the Treasury, is charged with implementing the Government’s delinquent debt collection program.**
- ▶ **To collect delinquent debts owed to Federal agencies and states, FMS uses the Treasury Offset Program (TOP).**
- ▶ **Offset is a process whereby Federal payments are reduced or “offset” to satisfy a person’s overdue Federal debt, child support obligation, or state tax debt.**
 - **A payee’s name and taxpayer identification number are matched against a Treasury/FMS database of delinquent debtors for automatic offset of funds.**
 - **Offset funds are then used to satisfy payment of the delinquent debt to the extent allowed by law.**
 - **FMS is currently unable to offset payments made to contractors with delinquent debts when the Governmentwide commercial purchase card is used as the method of payment.**
 - **The Government does not make a direct payment to the contractor. Instead, the processing bank for the Governmentwide commercial purchase card pays the contractor.**



DFARS Case 2007-D007 “Item Identification and Valuation Clause Update”

- ▶ **Type:** Proposed rule was published in the Federal Register at 72 FR 42367 on August 2, 2007. Public comment period closed October 1, 2007.
- ▶ **Source:** Internal DoD request to update provisions in the clause
- ▶ **Synopsis of rule:**
 - **Revises the clause at DFARS 252.211-7003 to update and clarify instructions for the identification and valuation processes.**
 - **The changes include:**
 - **Updating of references to standards and other documents;**
 - **Clarifying the definition of unique item identifier; specifically addressing the DoD recognized unique identification equivalent, where applicable;**
 - **Clarifying the data submission requirements for end items and embedded items; and**
 - **Clarifying the requirements for inclusion of the clause in subcontracts.**



DFARS Case 2007-D007 “Item Identification and Valuation Clause Update”

- ▶ **The contract clause at DFARS 252.211-7003, Item Identification and Valuation,**
 - **Requires unique identification for all delivered items for which the Government's unit acquisition cost is \$5,000 or more, and for other items designated by the Government.**
 - **The clause requires identification of the Government's unit acquisition cost for all delivered items, and**
 - **Provides instructions to contractors regarding the identification and valuation processes.**



Published Interim Rules

- **FAR Case 2006-027 “Use of \$1 Coins on Federal Facilities”**
- **DFARS Case 2007-D016 “Ship Critical Safety Items”**





FAR Case 2006-027 “Use of \$1 Coins on Federal Facilities”

- ▶ **Type:** Interim rule was published in the Federal Register at 72 FR 46361 on August 17, 2007. Public comment period closed October 16, 2007.
- ▶ **Source:** Section 104 of the Presidential \$1 Coin Act of 2005
- ▶ **Synopsis of rule:**
 - **Implement Section 104 of the Presidential \$1 Coin Act of 2005 which requires that entities that operate any business on any premises owned or controlled by the United States be capable of accepting and dispensing \$1 coins on and after January 1, 2008.**
 - **Applies to all service contracts that involve business operations conducted in U.S. coins and currency, including vending machines, on any premises owned by the U.S. or under the control of any agency or instrumentality of the U.S.**
 - **The clause shall be placed in all such solicitations and contracts on and after the effective date of this rule.**
 - **Applicable existing contracts whose period of performance extends beyond January 1, 2008 shall be modified to include the clause.**



FAR Case 2006-027 “Use of \$1 Coins on Federal Facilities”

- ▶ **Congress find that there are sectors of the United States economy, including public transportation, parking meters, vending machines, and low-dollar value transactions, in which the use of a \$1 coin is both useful and desirable for keeping costs and prices down.**
- ▶ **For a variety of reasons, the new \$1 coin introduced in 2000 has not been widely sought-after by the public, leading to higher costs for merchants and thus higher prices for consumers.**
- ▶ **The success of the 50 States Commemorative Coin Program (31 U.S.C. 5112(I)) for circulating quarter dollars shows that a design on a United States circulating coin increases demand for the coin, rapidly pulling it through the economy.**
- ▶ **The Presidential \$1 Coin Act of 2005 requires the Secretary of the Treasury to mint and issue annually four new \$1 coins bearing the likenesses of the Presidents of the United States in the order of their service and to continue to mint and issue “Sacagaweadesign” coins for circulation.**
- ▶ **In order to promote circulation of the coins, Section 104 of the Public Law requires that federal agencies take action so that, by January 1, 2008, entities that operate any business, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States, are capable of accepting and dispensing \$1 coins and that the entities display notices of this capability on the business premises.**



DFARS Case 2007-D016 “Ship Critical Safety Items”

- ▶ **Type:** Interim rule published in the Federal Register at 73 FR 1826 on January 10, 2008. Public comment period closed March 10, 2008.
- ▶ **Source:** Section 130 of the National Defense Authorization Act for Fiscal Year 2007
- ▶ **Synopsis of rule:**
 - **Implement Section 130 of the National Defense Authorization Act for Fiscal Year 2007 by amending DFARS 209.270-1 through 209.270-4 and related text to address ship critical safety items as well as aviation critical safety items.**
 - **Section 130 requires DoD to establish a quality control policy for the procurement, modification, repair, and overhaul of ship critical safety items.**
 - **identifies the responsibilities of the head of the design control activity with regard to quality control of critical safety items and related services.**



DFARS Case 2007-D016 “Ship Critical Safety Items”

- ▶ **Section 802 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) contained a similar requirement applicable to aviation critical safety items, which is implemented in DFARS 209.270-1 through 209.270-4.**
- ▶ **The Navy desired the same provision for ship critical safety items.**
- ▶ **“Ship critical safety item” means any ship part, assembly, or support equipment containing a characteristic the failure, malfunction, or absence of which could cause—**
 - **(1) A catastrophic or critical failure resulting in loss of or serious damage to the ship; or**
 - **(2) An unacceptable risk of personal injury or loss of life.**



Published Final Rules

- **DFARS Case 2007-D005 “Commercial Item Determinations”**





DFARS Case 2007-D005 “Commercial Item Determinations”

- ▶ **Type:** Final rule published January 24, 2008 at 73 FR 4114
- ▶ **Source:** DoDIG Report, Project D-2006-115 “Commercial Contracting for the Acquisition of Defense Systems” and DPAP Memorandum “Commercial Item Determinations” dated March 2, 2007
- ▶ **Synopsis of rule:**
 - This DFARS change requires the contracting officer to document, in writing and in the contract file, their determination that the commercial item definition has been met, for all acquisitions using FAR Part 12 that exceed \$1 million.
 - Additional PGI language at DFARS 212 provides guidance on some of the topics to consider when making such determination.



DFARS Case 2007-D005 “Commercial Item Determinations”

- ▶ **DoDIG Audit established that Military Departments Use of Commercial Acquisition Procedures:**
 - **Did not adequately justify the commercial nature of commercial contracts for defense systems and subsystems awarded**
 - **Did not achieve the benefits of buying truly commercial products and relinquished price and other oversight protections under the FAR that would have allowed better visibility to establish fair and reasonable prices.**
 - **DoD did not receive the benefits of readily available commercial technology, competitive prices established by the commercial marketplace, or the other benefits that would normally be associated with acquiring commercial items.**
 - **The Government relinquished its right to cost or pricing data and other oversight procedures contained in the Federal Acquisition Regulation.**
- ▶ **To emphasize the applicability of FAR Part 12, this DFARS rule specifies that, when using FAR Part 12 procedures for acquisitions exceeding \$1 million in value, the contracting officer must:**
 - **Determine in writing that the acquisition meets the commercial item definition in FAR 2.101, and**
 - **Fully documenting the market research and rationale supporting the conclusion that commercial item meets definition at FAR 2.101.**
 - **Include the written determination in the contract file.**



FAR Acquisition Strategy Team

Questions?

